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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Policies and Rules Concerning)
 Children's Television Programming)
)
 Revision of Programming Policies)
 for Television Broadcast Stations)

MM Docket No. 93-48

To: The Commission

REPLY COMMENTS OF
PULITZER BROADCASTING COMPANY

Pulitzer Broadcasting Company ("Pulitzer"), the licensee of nine television stations, supports the efforts of Congress and the Commission in ensuring that the educational and information needs of children are adequately served in the overall programming of television stations. Pulitzer is submitting Reply Comments because the adoption of certain proposals contained in the Commission's Notice of Inquiry ("Notice") and in comments submitted by various parties in this proceeding would contravene the intent of Congress that broadcasters have maximum flexibility and discretion in choosing programming to satisfy the requirements of the Children's Television Act of 1990 (the "Act") and would ultimately result in a reduction in the quality, innovativeness and effectiveness of programming responsive to children's educational and informational needs.

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PULITZER'S COMMITMENT TO CHILDREN

Pulitzer takes its responsibility to children very seriously. Pulitzer's nine television stations and two radio stations are committed to serving the educational and informational needs of children in their respective communities. For example, each Pulitzer television station contributes local segments to "Videomax," Pulitzer's cooperatively-produced, monthly half-hour program for pre-teens. "Videomax" highlights people and places of interest to young people in the Pulitzer markets, using local children as segment hosts. The program's goal is to stimulate individual creativity and ongoing education by exposing children to a wide variety of options for school, work and play.

As part of its commitment to children, Pulitzer stations produce short-segment programs such as dedicated kids segments in regular newscasts, specially-tailored public service announcements and community campaigns. For example, the multi-part series by Station KETV, Omaha, Nebraska, on "Children Having Children" showed what the Omaha community is doing in response to the growing social problem of teen pregnancy. Public service efforts on behalf of young people include the annual Children's Miracle Network telethon at Station WDSU-TV, New Orleans, Louisiana, which has raised over \$525,000 to date for the New Orleans Children's Hospital. The "Wednesday's Child" feature of Station WLKY, Louisville, Kentucky, has helped place more than 900 children in loving, adoptive homes. Station KOAT-TV,

Albuquerque, New Mexico, takes the message of children and car safety directly to the schools with its annual "Buckle Up" campaign, now in its eighth year.

ISSUES POSED BY THE NOTICE AND COMMENTERS

Pulitzer applauds the Commission for initiating a proceeding designed to give licensees guidance on the level and nature of service required to fulfill the programming obligations of the Act. Since a station's children's programming must be evaluated in a license renewal context, the Commission should, as a matter of due process, make its expectations clear. See Comments of Tribune Broadcasting Company, at 2. However, in an effort to provide guidance, it is critically important that the Commission not violate the express intent of Congress that broadcasters be given a great measure of discretion in complying with the Act.

~~In its Notice the Commission requested comment on three -~~

the Act's requirements and (b) with the goal of increasing the amount and variety of high quality children's programming.

SHORT SEGMENT PROGRAMMING

As the Commission pointed out in its Notice (at ¶ 4), Congress intended that television licensees should enjoy substantial discretion in determining whether a particular program qualifies as "education and informational" and in fixing the level or amount of children's programming that it will air. In accordance with the Act's legislative history, any programming that does, in fact, serve children's educational and informational needs must be considered in demonstrating compliance with the Act. Id. The Commission also acknowledged in its Notice that "[s]hort segment programming, including vignettes and public service announcements, live action, animated and general audience programs, whether network, syndicated or locally produced, can all be relied upon as contributing to a licensee's programming efforts on behalf of children." Id.

The Commission proposes that only standard-length programs be counted as "core" programs." Id. at ¶ 8. (A standard-length program is defined as a program at least 30 minutes long. Id. at ¶ 6). Pulitzer agrees with Capital Cities/ABC, Inc. (Comments, at 3) that the Commission's current criterion, which requires that some standard-length programming be broadcast but that also gives credit for short-form programming, is preferable to the Commission's new proposal. There is no sound basis for

concluding that short-form programs are of secondary importance from any educational viewpoint.

Indeed, the Commission has recognized that short-form programming is an effective educational vehicle because the segment length better matches the attention span of children, particularly younger children. Shorter program segments have a greater chance of attracting young children's attention than a 30 or 60-minute educational program. As aptly noted by National Broadcasting Company, Inc. (Comments, at 36), the acclaimed "Sesame Street" is nothing more than a series of educational segments, some as short as the typical commercial advertisement. Short segments also can be effective in reinforcing particular messages and when placed in or adjacent to popular entertainment programs can reach large numbers of children. See Comments of the National Association of Broadcasters, at 19.

The Commission has also recognized short-segment programming is less expensive for licensees to produce. Since short-form programs are more likely to be produced by television stations with few resources, the Commission should not arbitrarily discourage this form of programming. Indeed, in its Reconsideration Order, 6 FCC Rcd. 5095, 5101 (1991), the Commission made the following observation.

"[P]ermitting only conventional-length programming may discourage innovative programming on the part of broadcasters with limited resources, who may opt instead for inferior but inexpensive standard-length material that nevertheless fits the letter of the programming review requirement."

Accordingly, broadcasters should receive full credit at renewal time for producing programming, whether standard-length or short-segment, which addresses the needs of local children.

"CORE" PROGRAMMING

In its Notice, the Commission proposes to create a new category of "core" programs in which the "primary objective" and "explicit purposes" is education and information, with entertainment only a secondary goal. Pulitzer opposes this new criterion on the grounds that it is unworkable, would require the Commission to make impermissible judgments about program content, and would discourage, rather than encourage, the production of entertaining and informative programming specifically designed to meet children's educational and informational needs.

The comments filed in this proceeding provide compelling legal and policy reasons why adoption of the Commission's proposal would disserve the public interest. First, the proposed criteria would create more uncertainty for licensees. As pointed out by Capital Cities/ABC, Inc. (Comments, at 9), it is a more subjective standard, and thus less capable of being applied by the Commission in a consistent and evenhanded manner, than the statutory standard that a program be "specifically designed to serve children's educational or informational needs." The "specifically designed" standard is more objective than the proposed "primary objective" criteria because it can be tested by

reference to the program development process. Id. See also Comments of National Broadcasting Company, Inc., at 33.^{1/}

Second, as pointed out by Children's Television Workshop ("CTW") (Comments, at 6), the Commission's "primarily educational/secondarily entertainment" or "explicitly educational/implicitly entertainment" construct sets up a false dichotomy -- effective programming specifically designed to meet children's educational and information needs, as required by the Act, must first "reach" before it can "teach." CTW points out that children's program series which it produces (e.g., Sesame Street, Square One TV and CRO) have always been designed to both "reach and teach." The Commission should encourage rather than discourage broadcasters to air programs that are both educational and entertaining.

Third, under the Commission's proposed standard, many programs that in fact educate and inform children would be eliminated from consideration at renewal time. National Broadcasting Company, Inc. (Comments at 29-30) points out that almost every program mentioned with approval by Congress or the legislative history of the Act, and by the Commission in the Children's Report and Order, 6 FCC Rcd 2111 (1991) -- e.g., "Pee Wee's Playhouse," "The Smurfs," "Fat Albert," "Winnie the Pooh

^{1/} As an alternative approach, the Commission might allow a program to qualify so long as the licensee makes a reasonable, good faith judgment that a significant purpose of the program is to educate (i.e., to further "the child's intellectual/cognitive or social/emotional needs"). See Comments of The Walt Disney Company, at 11-12.

and Friends," "Saved by the Bell" -- probably had, as its primary purpose, entertaining children. These programs, however, inform and educate children in the course of entertaining them. Id.

Fourth, the question of whether education is the "primary objective" of children's programming, or the "explicit" as opposed to "implicit" purpose, is not a test which is consistent with the intent of Congress that licensees be afforded maximum flexibility in meeting their obligations under the Act. We agree with CBS, Inc. (Comments, at 33) that for the Commission to inquire into whether children's programs which have legitimate educational elements are nonetheless "primarily" intended to serve an educational purpose would be plainly at odds with Congress' "expect[ations] that the Commission will continue to defer to the reasonable programming judgments of licensees in

the future."

weekend of standard-length, informational and educational programming. Id.

Several commenters have suggested more stringent processing guidelines than suggested by the Commission. For example, Children's Television Workshop (Comments, at 12) suggests that the initial processing guideline be the greater of one hour or ten percent of each licensee's standard-length children's entertainment programming per week and over the next three to five years, that the ten percent standard be incrementally increased to 25 percent. Center for Media Education, et al. (Comments, at 22) "strongly urge that the processing guidelines should be at least one hour per day of 'core' programming for a total of seven hours per week." The United States Catholic Conference (Comments, at 6) suggests "seven to ten hours" per week as the minimum numbers of hours of children's educational programming.

As documented in the Comments of the National Association of Broadcasters, it is crystal clear from the legislative history of the Act that Congress did not intend that the Commission interpret the Act as requiring or mandating a quantification standard governing the amount of children's educational and informational programming that a licensee must broadcast to pass a license renewal review. See, e.g., H.R. Rep. No. 385, 101st Cong., 1st Sess. 17 (1989); 136 Cong. Rec. S10122 (July 19, 1990)

the broadcaster should be afforded the greatest possible flexibility in how it discharges its public service obligation to children.

In its Notice, the Commission acknowledges that "processing guidelines in the renewal area can take on the force of a rule, at least in the perception of licensees." Id. at 5-6. As a practical matter, processing guidelines would operate no differently than an absolute rule requiring the broadcast of specific amounts of educational and informational children's programming. In the real world, FCC-imposed quantitative guidelines quickly become de facto minimum performance standards.

Westinghouse Broadcasting Company, Inc. (Comments, at 11) stated that "[i]f each broadcaster were forced to program a specific high number of hours for kids each week, our children are likely to get a melange of low quality, low concept, low production-value, 'schlock' programs, which they will refuse to watch." Such a result would clearly make a quantification standard counterproductive. Pulitzer agrees with National Broadcasting Company, Inc. (Comments, at 23-24) that children's programming is not the place to focus on minute-counting -- arbitrary processing guidelines would create an incentive for a licensee to reject a high quality program that has the potential to attract and hold the attention of young audiences while it educates and informs, in favor of two or three mediocre programs that take up more time but can be obtained for the same or a lower price.

CONCLUSION

Fox Children's Network, Inc. (Comments, at 9-10) observed that "First Amendment concerns aside, the more explicitly the government delineates the parameters of the program standard, the higher the risk that innovative program concepts that might deviate slightly from that standard will not be explored." Pulitzer urges the Commission to refrain from adopting rigid definitions and requirements which would limit the creative freedom of broadcasters to produce programs designed to meet the particular educational and informational needs of children in their respective markets.

Respectfully submitted,

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